

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
MERCHANT MARINER'S DOCUMENT
Issued to: William J. AUSTIN Z-030-32-3936-D2

DECISION OF THE COMMANDANT ON APPEAL
UNITED STATES COAST GUARD

2231

William J. AUSTIN

This appeal has been taken in accordance with Title 46 U.S.C. 239(g) and 46 CFR 5.30-1.

By order dated 15 November 1979, an Administrative Law Judge of the United States Coast Guard at Boston, Massachusetts, revoked Appellant's seaman's document upon finding him guilty of misconduct. The specification found proved alleged that while serving as Day Maintenanceman aboard SS EXPORT BANNER under authority of the document above captioned, on or about 13 August 1976, while said vessel was in the port of Brooklyn, New York, Appellant wrongfully had in his possession certain narcotics, to wit, marijuana and opium.

The hearing was held at Baltimore, Maryland, on 24 July 1979, and in Boston on 14 August and 27-28 September 1979.

At the hearing, Appellant was represented by professional counsel and entered a plea of not guilty to the charge and specification.

The Investigation Officer introduced in evidence nine documents.

In defense, Appellant offered in evidence his own testimony and the testimony of seven other witnesses.

After the hearing, the Administrative Law Judge rendered a written decision in which he concluded that the charge and specification had been proved. He then served a written order on Appellant revoking all documents issued to him.

The entire decision was served on 16 November 1979. Appeal was timely filed on 11 December 1979 and perfected on 21 February 1980.

FINDINGS OF FACT

On 13 August 1976, Appellant was serving as Day Maintenanceman

on board SS EXPORT BANNER and acting under authority of his document while the vessel was berthed in the port of Brooklyn, New York. Appellant was detained as he was leaving the vessel by United States Customs officers. Upon searching Appellant, the Customs officers found a quantity of narcotics subsequently identified as marijuana and opium.

On 26 June 1979, Appellant was served with a "Notice of Hearing" in this matter in Baltimore, Maryland.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. It is urged that the Administrative Law Judge erred in refusing to make the effective date of his order retroactive to the date when the unlawful possession was first established, or approximately 16 August 1976.

APPEARANCE: James G. Nye, Jr., Esq., of Westborough, Massachusetts.

OPINION

Retroactive revocation of a document or license is not permissible. A written order is required prior to revocation of a document, and an appeal will lie only within thirty days of the order. 46 U. S. C. 239(g). To issue a retroactive order would therefore effectively negate Appellant's right of appeal to the Commandant. This principle is well established in R.S. 4450 proceedings. Decisions on Appeal Nos. 2103, 1161 and 845. I do not accept Appellant's contention that the fundamental purpose of these proceedings, to promote safety, is injured by the lapse of time between the possession offense and revocation hearing. The misconduct giving rise to the revocation proceedings was of a sort long recognized to be especially dangerous. Remedial measures are most apt to be effective when those subject to the regulations know for a certainty that circumstances will not prevent the arrival of the day of reckoning. It is unfortunate that Appellant's pattern of work and change of address rendered it difficult for charges to be served in more timely fashion. However the delay did not exceed the applicable limitation period, and no special prejudice arose to inhibit Appellant's ability to meet the charge in open hearing.

CONCLUSION

Proof of the specification and charge were established by reliable and probative evidence. Accordingly, the Administrative Law Judge properly revoked Appellant's document.

ORDER

The order of the Administrative Law Judge dated at Boston, Massachusetts, on 15 November 1979, is AFFIRMED.

R. H. SCARBOROUGH
Vice Admiral, U. S. Coast Guard
Acting Commandant

Signed at Washington, D. C. this 16th day of September 1980.